

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHIRLEY L. PHELPS-ROPER)	Case No. 4:09 CV 3268
)	
Plaintiff,)	ANSWER TO
)	AMENDED COMPLAINT
vs.)	
)	
DAVE HEINEMAN, in His Official)	
Capacity as Governor of Nebraska,)	
et al.,)	
)	
Defendant.)	

COMES NOW Steven M. Curry, Merrick County Attorney, Defendant and Anthony McPhillips, by Steven M. Curry, Merrick County Attorney, Defendant, and for answer to the Complaint captioned above state as follows:

Factual allegations as to these Defendants are found at Paragraph 43 of the Plaintiffs' Amended Complaint.

1. In response, these Defendants answer and allege that some time prior to June 20, 2006 some person who did not identify themselves called the Merrick County Sheriff's Department to announce their intention to picket a funeral which was to be held in the Village of Clarks in Merrick County, Nebraska.

At no time did Defendant McPhillips in his capacity as Sheriff of Merrick County, advise or threaten the Plaintiff or any person associated with the Plaintiff that they would be arrested. In fact, Sheriff McPhillips advised the caller that although he disagreed with the proposed picketing, it was his duty as Sheriff to protect the Plaintiff's right to protest and that as long as the protest was orderly and lawful no actions would be taken against any demonstrators.

After the end of the telephone call Sheriff McPhillips took steps to provide an area close to the funeral site where Plaintiffs could protest, and took steps to insure their safety in doing so.

This Defendant denies any statement to the media suggesting that Plaintiff would be denied the right to protest at the funeral.

Many persons attended the funeral and at the request of the family, the local fire department, police and veterans participated. However, neither the Plaintiffs or any persons associated with the Plaintiffs attended the funeral or were present in Clarks, Nebraska at any

time immediately before, during, or after the funeral. The Plaintiffs having failed to attend the funeral any claims that their rights to protest or picket were infringed in any way, are false and without any basis in fact.

2. As to all other factual allegations in the Amended Complaint not specifically admitted herein, they are denied.
3. The Complaint as filed fails to state a cause of action against these Defendants.
4. The Complaint as filed improperly joins unrelated causes of action and unrelated parties Defendant.
5. Affirmatively alleges that the complaint was filed without basis in law or fact and was solely filed to vex and harass these Defendants.

WHEREFORE, these Defendants pray the Complaint against them be dismissed and that the Court grant as against the Plaintiff, Defendants' reasonable attorneys fees and costs in defense of this action.

/s/ Steven M. Curry
Steven M. Curry, #10875
Merrick County Attorney

ANTHONY MCPHILLIPS, Merrick County
Sheriff

By: /s/ Steven M. Curry
Steven M. Curry, #10875
Merrick County Attorney

CERTIFICATE OF SERVICE

It is hereby certified that on the 20nd day of April, 2010, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to the following attorneys of record:

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